SUPREME COURT, U. S.

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1968

NO. 688

UNITED STEELWORKERS OF AMERICA, *Petitioner*,

vs.

CCI CORPORATION, A Corporation, *Respondent*.

BRIEF OF CCI CORPORATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Respondent prays that the Petition for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit be denied.

STATEMENT OF THE CASE

This matter involves a suit for breach of contract under Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185. The District Court rendered judgment for Respondent, CCI Corporation, against Petitioner, United Steelworkers of America, in the amount of $18,824.51, by reason of the Union's breach of a collective bargaining contract which the Trial Court found it had entered into on December 10, 1965.

The Trial Court, in its findings and conclusions set forth at pages 35 to 37 of the Record, found that on December 10, 1965, CCI and the Union entered into an oral collective

bargaining contract providing for wages, hours and other working conditions, and that this contract was in full force and effect on January 31, 1966; that on January 31, 1966, and prior to the filing of this action, CCI and the Union reduced their agreement of December 10th to writing and executed same; that the agreement entered into on December 10th between the parties provided that there would be no work stoppage; that CCI was never informed by the Union of any need or requirement for approval of this contract by the international officers of the Union; that the Union led CCI to believe on December 10, 1965, that an agreement had, in fact, been reached between CCI and the Union and that no further action or ratification of the contract was necessary. The Trial Court further found that it was not a part of the agreement between CCI and the Union to wait for the international officers of the Union to approve the agreement, and that this matter was never discussed by any of the parties and was not in the contemplation of the parties; that it was the intention of CCI and the Union in entering into the agreement on December 10th, 1965, that said agreement should become effective immediately; that the written agreement executed on January 31, 1966, was intended by the parties merely as a convenient record of their previous contract entered into on December 10, 1965.

The Trial Court further found that although 187 employees represented by the Union were scheduled to work the first shift on January 31, 1966, only seven men reported for work and that the Union, although fully aware of the work stoppage, made no effort to prevent or to end same; that the Union, acting through its agents and employees, participated in and encouraged, condoned and authorized the work stoppage on January 31, 1966; that as a result of this work stoppage, CCI sustained a loss in the amount of $18,824.51, which consisted of loss of profits in the amount

of $5,729.02; unabsorbed manufacturing expense in the amount of $8,111.87, and unabsorbed administrative expenses in the amount of $4,983.62.

The Trial Court, after making the foregoing findings, concluded that it had jurisdiction of the parties and of the subject matter of the case by virtue of the provisions of 28 U.S.C. § 1337 and 29 U.S.C. § 185; that CCI was an employer within the meaning of Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185; that CCI was engaged in commerce within the meaning of the Labor Management Relations Act; that the Union was a labor organization representing employees in an industry affecting commerce as defined in the Labor Management Relations Act; and that its officers and agents are engaged in representing and acting for employee-members of the Union within the United States Judicial District for the Northern District of Oklahoma; that the Union's action in participating in and encouraging, condoning and authorizing the work stoppage of January 31, 1966, constituted a breach of the contract of December 10, 1965, for which the Union is liable for damages; the Court further concluded that CCI was not barred under the Oklahoma Statute of Frauds for the reason that the December 10, 1965, agreement was reduced to writing and signed by the Union prior to the filing of this lawsuit.

On appeal the Court of Appeals in a unanimous opinion affirmed the judgment and underlying rationale of the Trial Court. The opinion is reported in 395 F. 2d 529.

REASONS FOR DENYING THE WRIT

1. The decision of the Tenth Circuit in this case is not in conflict with the decision of the Fourth Circuit in *United*

Construction Workers v. Haislip Baking Company, 223 F. 2d 872 (1955), cert. denied 350 U.S. 847.

The Union's application for a writ of certiorari is premised almost entirely upon an asserted conflict between the Tenth Circuit's decision in this case and the Fourth Circuit's decision in *United Construction Workers v. Haislip Baking Company, supra.* A close examination of the decision in that case reveals, however, that there is no conflict. The facts set forth in the opinion disclose that a strike occurred because two employees were discharged for an unexplained absence. There was no evidence and no contention that the defendant unions instigated or had anything to do with the strike at its inception. Two representatives of the defendant unions, Morris and Belcher, were asked by the plaintiff employer to assist in getting the men back to work. Belcher advised the men to go back to work without insisting on the reinstatement of the discharged employees, but the men refused. There is no evidence that Morris or Belcher attempted to prevent the men from returning to work. After the men voted not to return, Belcher told them they had made a mistake.

Thereafter, the employer went out of business and filed suit against the defendant unions for damages.

At the trial the foregoing evidence was introduced, and the case was submitted to a jury for decision. The trial court instructed the jury that it was the duty of the union to settle the dispute growing out of the suspension or discharge of the two employees, as provided in the contract, and the action of the local union in striking instead of settling the dispute, as they were obligated to do under the contract, constituted a breach of the contract. For this breach of the contract, the trial court instructed the jury that the local union would

be liable. The trial court also instructed the jury (223 F. 2d at 876):

> . . . However, the local Union is not being sued in this action. This suit is against the United Construction Workers and the United Mine Workers of America. These defendants would not be liable unless their agents Morris and Belcher, after learning of it, one or both of them, participated in, ratified or encouraged the continuance of the strike. If you believe from a preponderance of the evidence that on May 30, 1950, Morris and Belcher, either or both agents of the defendants, acting within the scope of their authority, participated in, ratified or encouraged the continuation of the strike, in violation of the contract, you should find for the plaintiff; on the other hand, unless you believe from a preponderance of the evidence that Morris and Belcher, either or both, agents of the defendants, acting in the scope of their authority, participated in, ratified or encouraged the continuation of the strike, in violation of the contract, you should find for the defendants.

The Fourth Circuit approved this instruction as correctly setting forth the applicable law. The Court held, however, that although the jury had been correctly instructed, the evidence was not sufficient to support a finding that either Morris or Belcher participated in, ratified or encouraged the continuance of the strike. The Court stated:

> . . . What we are dealing with is, not a case where circumstantial evidence points to instigation of a strike by defendants or the agents who represented them, but a 'wild cat' strike of local origin, without anything to suggest that defendants or their agents had anything to do with bringing it about. Morris and Belcher were called in to try to end the strike and get the men to go back to work, and everything that they did was directed to that end. Even if the testimony as to their advising the men to go back to work be disregarded and it be as-

> sumed that they did nothing of the sort, there is no evidence to support the view that they adopted the strike, that they encouraged it or that they prolonged it. (223 F. 2d at 877)
>
> . . . The question is not whether they did everything they might have done, but whether they adopted, encouraged or prolonged the continuance of the strike. There is no evidence of any sort that they did. (223 F. 2d at 877, 878)

Pursuant to these principles the Court reversed the trial court's judgment and remanded the case with direction to enter judgment for defendants.

The evidence before the Tenth Circuit in the instant case is in marked contrast to the evidence before the Fourth Circuit in *United Construction Workers.* In this case the Tenth Circuit had before it a specific finding which provided:

> Finding of Fact No. 11: The Defendant, acting through its agents and employees, *participated in, encouraged, condoned and authorized* the work stoppage on January 31, 1966 (R. 36). (Emphasis supplied)

This finding was supported by substantial evidence, much of it from the lips of Roy Vanya, Staff Representative for the Union. Vanya admitted that he was a Staff Representative for the Union and that he had held such position for approximately two and one-half years (R. 147). He admitted that his duties as Staff Representative included organizing and servicing local unions and representing the Union in collective bargaining negotiations (R. 147-148); and that his salary was paid by the Union (R. 149). He further admitted that he was on or about the premises of CCI from 6:30 A. M. until 8:30 or 9:00 A. M. on the day of the work stoppage (R. 150-151). Testimony of CCI's Industrial Relations

Director established that the first employees were scheduled to report for work at 6:00 A. M. and the balance at 8:00 A. M. (R. 120). At 6:00 A. M. the work stoppage began (R. 120). Vanya, the Union representative, was, therefore, present at the inception of the illegal work stoppage and continued to be present for several hours after it commenced (R. 150-151).

Vanya testified that in conversations with the employees and in response to their questions as to whether they had to cross the Teamsters' picket line and go to work, he replied: "This is up to you as an individual." (R. 153); that he made *no* effort to get any of the employees back to work, nor did he tell any of the employees that they had to cross the picket line and go to work (R. 153); that he never told them that the Union had an agreement with the Company prohibiting strikes (R. 154). Although 187 employees represented by the Union were scheduled to work the first shift on January 31, 1966, only seven men reported for work (Pl. Ex. 5; R. 175, 298, 36). Vanya further admitted that he returned to the premises of CCI on the afternoon of January 31, 1966, and instructed the employees to go back to work (R. 155). The employees responded and went to work (R. 130).

Unlike the evidence before the Fourth Circuit, the Tenth Circuit in this case had before it substantial evidence to sustain the Trial Court's finding that the Union had "participated in, encouraged, condoned and authorized" the illegal work stoppage. The presence of the Union representative during the inception and continuation of the work stoppage, together with the Union representative's statement to the employees that it was "up to you as an individual" to decide whether to cross the picket line was ample evidence to show adoption of the illegal walkout. As the Tenth Circuit

stated in its opinion (395 F. 2d at 532-533):

> . . . On January 28, 1966, CCI was struck and picketed by the Teamsters' Union. On January 31 the first shift of the Steelworkers, due in at 6:00 A. M., refused to cross the picket line although urged to do so by company officials by announcement over the public address system that they, the employees, had a contractual duty to do so. Vanya and his negotiating committee were present at the scene and Vanya, when asked by individual Steelworkers as to what to do replied, 'This is up to you as an individual.' As a result seven men reported for work, one hundred and eighty did not.
>
> Although the Steelworkers disavow any union responsibility for the actions of its members we find no merit to the contention. The refusal to cross the Teamsters' line was clearly a breach of contract, NLRB v. Rockaway News Supply Co., 345 U. S. 71, and by no stretch of the imagination could the action be termed a wildcat. Vanya told the second shift to report in and the men followed his instructions. We hold the inculpation of the Steelworkers' Union to be clear.

Respondent submits that had the instant case been submitted to the Fourth Circuit, the decision would have been the same. Had the facts in *United Construction Workers v. Haislip Baking Company, supra,* been submitted to the Tenth Circuit, the decision likewise would have been the same. Both Circuits recognized in their respective opinions that Section 301(e) of the Labor Management Relations Act (1947), 29 U.S.C. § 185, opened the way for application of general rules of agency and particularly the rules of apparent authority. In this regard they are in accord with the Ninth Circuit (see *International L & W Union v. Hawaiian Pineapple Co.*, 226 F. 2d 875 (1955)), and with the decisions of the National Labor Relations Board interpreting a provision of the National Labor Relations Act identical to Sec-

tion 301(e) (see *Sunset Line and Twine Co.*, 79 NLRB 1487; *Central Massachusetts Joint Board*, 123 NLRB 590; *International Ladies Garment Workers Union, AFL-CIO*, 145 NLRB 10; *United Mine Workers of America, Local 7083*, 146 NLRB 176; *International Brotherhood of Teamsters Local Union No. 377*, 159 NLRB 1313). There is, therefore, no conflict between the Circuits as to the law which should be applied in this case.

2. The decision of the Tenth Circuit in this case does not present important questions of federal law which have not been settled by this Court.

The Union in its Petition for Writ of Certiorari to this Court, although relating its arguments to legal issues, is essentially challenging the Trial Court's findings of fact. Under Rule 52(a) of the Federal Rules of Civil Procedure, findings of fact may not be set aside unless "clearly erroneous." This Court has held that under the "clearly erroneous" rule an Appellate Court cannot upset a Trial Court's factual findings unless it is left with a definite and firm conviction that a mistake has been committed (*Guzman v. Pichirilo*, 369 U.S. 698 (1962)). The Court of Appeals for the Tenth Circuit by unanimously affirming the decision of the Trial Court and in accepting the findings of the Trial Court as controlling and in basing its own decision upon them, impliedly concluded that the findings were not clearly erroneous (*Campbell v. United States*, 373 U.S. 487 (1963)). This case is therefore but another in a long series of decisions resolving factual issues. Although its outcome is of vital importance to the litigants, it does not warrant further review by this Court.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for certiorari should be denied.

Respectfully submitted,

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